



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

DECISION

HMO/154776

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2014, under Wis. Stat. §49.45(5)(a), and Wis. Admin. Code §HA 3.03, to review a decision by the Division of Health Care Access and Accountability, now known as the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on February 06, 2014.

The issue for determination is whether the agency properly reduced the petitioner's personal care worker (PCW) hours from 3 hours/day to 1.75 hours/day.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Attorney Liz Bartlett, Attorney for iCare
1555 N. RiverCenter Dr. Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner enrolled in i-Care effective October 1, 2013. i-Care is a Wisconsin licensed health maintenance organization (HMO) that contracts with the Department of Health Services to

provide and pay for MA benefits for SSI disabled eligible individuals. i-Care is responsible for making benefit coverage determinations under the MA plan.

3. On October 24, 2013, a registered nurse for Metro Home Health Services Inc. completed a Personal Care Screening Tool (PCST) assessment of the Petitioner. She noted the following:
 Bathing – level of help needed: D. Bathes in tub with partial physical assistance of another person. 7 days/week needed.
 Dressing – level of help needed for upper body: D. Needs partial physical assistance from another person to dress upper body. 7 days/week, 1x/day. Level of help needed for lower body: D. Needs partial physical assistance from another person to dress upper body. 7 days/week, 1x/day. She also requires a left foot brace which she needs assistance with 2 days/week.
 Grooming - level of help needed: E. Needs partial physical assistance to groom self 7 days/week, 1x/day.
 Eating - level of help needed: A. Feeds self, no PCW assistance needed.
 Mobility – level of help needed: D. Needs physical help from another, 7 days/week.
 Toileting – level of help needed: D. Needs physical help from another person to use toilet and/or change personal hygiene product. 1x/day, 7 days/week.
 Transferring – level of help needed: D. Needs physical help of another person but is able to participate. 7 days/week.
 Medication Assistance – level of help needed: B. Needs assistance. 1x/day, 7 days/week. The PCST also requested time for the delegated nursing acts of glucometer readings 1x/day 7 days/week, skin care (lotion) 1x/day 7 days/week, and a home exercise program 1x/day 7 days/week.
4. On December 13, 2013, i-Care received a prior authorization request from Metro Home Health Services Inc. seeking approval for the Petitioner to receive 3 hours/day of PCW services for 5 days per week and 3.25 hours/day for 2 days/week during the certification period of December 26, 2013-June 23, 2014.
5. On December 19, 2013 HealthReach conducted an in-home assessment on petitioner to personally review her functional capabilities and needs for a PCW.
6. Based on the i-Care PCST completed on October 24, 2013, the petitioner was notified that her PCW hours would be reduced to 1.75 hour/day.
7. The petitioner is diagnosed with disc degeneration, arthritis, diabetes, high blood pressure and asthma.
8. The petitioner lives alone.

DISCUSSION

i-Care is required to provide or arrange for the provision of medically necessary and appropriate medical services for its enrollees as required under Wis. Stats. §49.46(2), and Wis. Admin. Code §DHS 107(1). Wisconsin Administrative Code §DHS 107.112(1) states that Wisconsin MA covered personal care services are those medically oriented activities that are related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community.

To obtain a PA for personal care services, providers are required to submit documents to the MA program that accurately and completely demonstrate the need for the requested personal care services. Providers are to use the Personal Care Screening Tool (PCST) to determine the allocation of PCW time needed.

The PCST is a tool that collects information on an individual's ability to accomplish activities of daily living, instrumental activities of daily living, medically oriented tasks delegated by an RN and the member's need for personal care worker assistance with these activities in the home. The PCST must be completed based on a face-to-face evaluation of the member in the member's home. The screener must directly observe the member performing the activity before selecting the member's level of need.

A Personal Care Activity Time Allocation Table is used by providers to assist in prorating time for service-specific activities provided by personal care workers.

At the hearing, the HMO explained that the main problem with petitioner's request for PCW was that the in-home assessment done by HealthReach showed that petitioner was independent in the areas of mobility, toileting and transferring. This is different than the level of help noted in the PCST. At the in-home assessment petitioner also indicated that the glucometer readings were not done with PCW assistance, and therefore no time was allowed for that. The HMO also argued that the application of lotion (ammonium lactate 12%) was an over-the-counter product, and therefore no time was allowed for such a lotion. The HMO also did not award time for the home exercise program because that is not a covered PCW service. The HMO therefore awarded her time for bathing (30 minutes), 20 minutes a day for dressing upper and lower body, 10 minutes per day for assistance with braces, 15 minutes per day for grooming, and 10 minutes per day for medication assistance. This is a total of 85 minutes for ADLs. Then HMO also awarded time per day for incidental services such as laundry or meal setup. The result was an award of 1.75 hours/day.

First, there are discrepancies that do not make sense in the calculation of time. Adding up all the time the HMO awarded to ADLs, is 85 minutes. Time for services incidental is calculated as 1/3 of the ADL time. That should be 28 minutes. Adding that to the 85 minutes is a total of 113 minutes, which converts to 1.88 hours, not the 1.75 awarded. Second, there is conflict between the HMO and the DHS' (Ex. 7) information regarding the time awarded for the medication assistance and the application of skin lotion. The HMO says the medication assistance is allowable, the DHS does not. The DHS says the skin lotion is allowable, the HMO says it is not. I am not going to disturb the allowance for the medication assistance. However, I do not find that the evidence shows that denying the time for the skin care was appropriate here. The PCST Instructions advise that this time is allowable where "Skin care is the application of legend solutions, lotions or ointments that are ordered by a physician due to skin breakdown, rashes, and other medical conditions requiring treatment." Exhibit 2. Petitioner's physician has prescribed her this lotion by name and with the frequency prescribed. There is no evidence that this is prescribed for routine use for cosmetic purposes. Rather, we have the prescription per doctor and ample evidence that petitioner's physical limitations would prevent her from being able to apply it herself. Therefore, I am allowing 5 minutes per day for this service.

Based on the preponderance of the evidence presented, I conclude that the Petitioner should be allocated 118 minutes/day of PCW time – this includes the 113 minutes already awarded and 5 minutes per day for the lotion. This is 1.96 hours per day.

Petitioner is reminded that grab bars for assistance regarding toileting and bathing were recommended to further assist her. She is also reminded to inquire as to other MA programs that could provide her the supportive home care she is looking for to assist her. If she has not already done so, she can contact the Disability Resource Center (DRC) of Milwaukee County, Phone: (414) 289-6660; TTY/TDD/Relay: (414) 289-8559; Email: InfoMilwDRC@milwcnty.com; Office Location: 1220 W. Vliet Street, Suite 300, Milwaukee, WI 53205.

CONCLUSIONS OF LAW

The petitioner should be allocated 118 minutes/day of PCW time.

THEREFORE, it is

ORDERED

That this matter be remanded to the agency to take the administrative steps necessary to increase the petitioner's PCW time from 113 minutes/day to 118 minutes/day for the certification period of December 26, 2013-June 23, 2014. This action shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

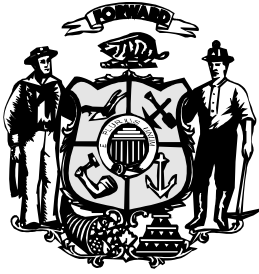
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of March, 2014

\s\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



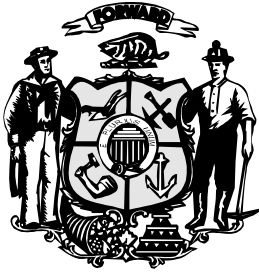
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

Telephone: (608) 266-3096
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 25, 2014.

Division of Health Care Access and Accountability



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Division of Health Care Access and Accountability